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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE ex rel. ALAN BURNS, as
City Attorney, etc.,

Plaintiff and Respondent,

v.

TANYA THANH-THAO TRUONG et al.,

Defendants and Appellants.

G052228

(Super. Ct. No. 30-2014-00700251)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Ronald Talmo; and John R. Cogorno for Defendants and Appellants.

Law Offices of Harper & Burns and Colin R. Burns for Plaintiff and Respondent.

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Defendants Tanya-Thanh Thao Truong and Le Crystal Khanh (Le) appeal from a judgment that permanently enjoined them from engaging in prostitution or massage at a specific location, awarded costs to plaintiff the City of Fountain Valley, and imposed (but stayed) civil penalties on them. Defendants contend the conduct of undercover officers, who allowed defendants to masturbate them, bars plaintiff from obtaining relief due to the defense of unclean hands. We disagree and affirm the judgment.

FACTS

In 2009 and 2010, undercover investigations of the FV Day Spa massage parlor at 16567 Brookhurst Street (sometimes referred to as “the address”) resulted in arrests of eight men for solicitation of prostitution, and of other individuals for prostitution or pimping.

In 2012, the business at the address was called California Massage and Tan. An undercover investigation in January of 2012 confirmed prostitution was still occurring there.

Around May 2012, Truong’s sister, Truc Truong, bought a massage business located at the address. Truong took over the business and renamed it TT Therapy and Spa (TT Therapy) around October 2012.

In October 2013, Officer C. entered TT Therapy undercover, where his masseuse, Truong (who went by “Maria”), massaged around his thigh area and genitals, and giggled. Officer C. asked if she would be willing to take care of him. He held up four fingers to offer \$40. Truong curled her fingers and moved her hand up and down to indicate masturbation. Truong also put her finger up to her mouth to indicate he was being too loud. She applied oil to his penis and began to masturbate him. He told her to

stop. Truong tried to continue and he had to physically cover himself to stop her. The incident lasted 20 seconds.

Also in October 2013, Sergeant S. entered TT Therapy undercover, where his masseuse, Tuyet Tran (who identified herself as “Michelle”), at one point grabbed his penis and began masturbating it for about five or 10 seconds. Sergeant S. told her to stop and had to push her hand away to keep her from continuing. He asked if it was included in the massage. Tran responded, “If you have money, you tip me well.” Sergeant S. asked if she performed other services, such as sex. She responded that she only does “hand jobs.” Sergeant S. gave Tran \$40.

In November 2013, Officer James R. entered TT Therapy undercover, where his masseuse, Le (who identified herself as “Lillie Le”) responded to Officer James R.’s question (about whether there were any specials) by shaking her hand back and forth. They agreed on a price of \$40. Le asked if he was a cop. He asked if he looked like a cop. She asked if he needed help with the “release.” She applied oil and began masturbating him. The officer said he had to leave to make a phone call. He gave her \$40.

On January 22, 2014, plaintiff the City of Fountain Valley (in the name of the People) filed a complaint to abate a red light (prostitution) nuisance under Penal Code section 11225 et seq. against, inter alia, TT Therapy, Truong, and Le.¹

On January 28, 2014, Detective Donald F. entered TT Therapy undercover, where his masseuse, Le (who identified herself as “Lillie”), asked if she could help him out. Detective Donald F. asked, “How much?” Le responded “whatever” and began masturbating him. He interrupted her by asking to see her breasts. When Le attempted to continue masturbating the officer, he turned away from her. Le asked if he was “undercover,” which he denied. He tipped Le \$20.

¹

All statutory references are to the Penal Code.

On June 17, 2014, plaintiff obtained a preliminary injunction prohibiting TT Therapy, Truong, and their employees from using or permitting the use of 16567 Brookhurst Street for prostitution; engaging in acts of prostitution; and taking payment for prostitution.

On July 16, 2014, one month after the issuance of the preliminary injunction, Officer C. entered TT Therapy undercover, where his masseuse, Tran (who this time identified herself as “Mindy”) responded to Officer C.’s question (about whether she was willing to take care of him) by asking him if he wanted her to masturbate him, putting oil on her hands, and reaching for his genitals. He said he did not have enough money, and physically covered himself. He tipped her.

On July 17, 2014, Officer James R. entered TT Therapy undercover, where his masseuse, Le (who this time identified herself as “Jennifer”), gestured with her hand, said she knew what he wanted, grabbed his penis, and asked how much money he had. He replied \$40 and Le shook her head up and down. She applied oil and began masturbating him. He stopped her. He gave Le \$40. She said if he was a “cop” she did not want his money, and he told her to keep the money.

The court found the officers were credible witnesses and the defendants were not. In its judgment, the court found Truong and Le maintained a public nuisance under the Red Light Abatement Law (§ 11225 et seq.) at 16567 Brookhurst Street, and actively engaged in and committed acts of prostitution there between October 2013 and December 2014. The court permanently enjoined them from engaging in prostitution or massage there. The court awarded plaintiff attorney fees and costs, and imposed, but stayed, civil penalties against Truong and Le.

Defendants moved for a new trial, arguing the officers engaged in criminal behavior by allowing completed sex acts to occur on them and therefore the unclean hands defense barred plaintiff’s case. The court denied the motion, finding the following material facts showing the officers were not guilty of unclean hands: “(1) the City of

Fountain Valley had a substantial problem with unlawful sex acts in massage parlors; (2) the purpose of police actions was to identify and eliminate those acts; (3) the officers did not engage in entrapment — the masseuses initiated the sexual activity, and were not goaded into doing anything that was not their proclivity; and (4) the officers did not allow the activity to go on beyond the reasonable time necessary to verify the masseuses were actually engaging in lewd acts during massages for extra remuneration.”

DISCUSSION

Defendants contend plaintiff is barred from obtaining relief due to the allegedly unclean actions of its police officers.

“The doctrine of unclean hands rests on the maxim that “he who comes into equity must come with clean hands.” (*Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1495.) “The doctrine of unclean hands requires unconscionable, bad faith, or inequitable conduct by the plaintiff in connection with the matter in controversy.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 56.)

“The decision whether to apply the unclean hands defense is a matter within the trial court’s discretion. [Citation.] In exercising this discretion, the court ‘must consider the material facts affecting the equities between the parties’” (*Farahani v. San Diego Community College Dist.*, *supra*, 175 Cal.App.4th at pp. 1495-1496.) Whether the defense applies to a particular fact pattern is reviewed for abuse of discretion. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 447.)

“Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries.” (*Fladeboe v. American Isuzu Motors Inc.*, *supra*, 150 Cal.App.4th at p. 56.) Applying these factors, defendants first submit that the “closest

analogous case” to the officers’ alleged misconduct here is *People v. Brocklehurst* (1971) 14 Cal.App.3d 473. But *Brocklehurst* held that an undercover officer became an accomplice when he participated, as part of his investigation, in the *general intent* crime of oral copulation (*id.* at pp. 475-476; see § 288a [Generally, crime of oral copulation is committed by participating in the act, either with persons under a specified age, or by force, fear, violence, or lack of legal consent].) The Court of Appeal distinguished the oral copulation offense from specific intent crimes, where undercover officers are merely *feigned accomplices* because their specific intent is to discover illegal activity, not engage in crime. (*Brocklehurst*, at pp. 478-479.) Here, the offense at issue, i.e., prostitution, is a specific intent crime. (§ 647, subd. (b) [“A person agrees to engage in an act of prostitution when, *with specific intent to so engage*, he or she manifests an acceptance of an offer or solicitation to so engage,” *italics added*].) In sum, *Brocklehurst* is the only decision defendants proffer as analogous case law, but it is not analogous to the matter before us.

Furthermore, as to the nature of the officers’ alleged misconduct, defendants quote section 647, subdivision (b), and then assert “[t]here was no requirement that this particular police department needed to engage in the criminal act itself to accomplish its mission.” Not so. Section 647, subdivision (b) states in relevant part: “No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done . . . in furtherance of the commission of an act of prostitution” In other words, the officers were required to cooperate until defendants had performed an act of prostitution. Furthermore, the officers sought to terminate defendants’ acts tactfully, so as not to draw suspicion. But defendants complain about Detective Donald F.’s request to see Le’s breasts and Officer C.’s allowing Truong to masturbate him for 20 seconds. Detective Donald F. used his request to see Le’s breasts to interrupt her act of masturbating him. The trial court found

the officers did not allow the activity to go on beyond the reasonable time necessary to verify the masseuses were actually engaging in prostitution.

Finally, as to the relationship between the misconduct and the claimed injuries, defendants contend the officers' misconduct is identical to the acts of prostitution which plaintiff sought to prevent. Given the officers' intent to uncover crime, defendants' argument is unpersuasive.

The court did not abuse its discretion by finding the unclean hands defense did not apply.

DISPOSITION

The judgment is affirmed. Plaintiff is entitled to costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.